

IN THE SUPREME COURT OF THE STATE OF DELAWARE

HILLARD M. WINN,	§
	§ No. 414, 2010
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0603002909
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 14, 2011

Decided: February 16, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 16<sup>th</sup> day of February 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Hillard M. Winn, filed an appeal from the Superior Court’s June 17, 2010 order denying his motion to correct an illegal sentence pursuant to Superior Court Criminal Rule 35(a). We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, in September 2006, Winn was found guilty by a Superior Court jury of Burglary in the First Degree, Assault in the Third Degree, Terroristic Threatening and Possession of a Deadly Weapon During the Commission of a Felony. He was sentenced as a

habitual offender<sup>1</sup> to a total of 33 years of Level V incarceration, to be suspended after 30 years for probation. This Court affirmed Winn's convictions on direct appeal.<sup>2</sup>

(3) In this appeal, Winn claims that his motion for correction of illegal sentence should have been granted. He contends that his sentence is illegal because a) he was tried and sentenced for first degree burglary and third degree assault, charges that were not contained in his indictment; b) the State did not support its habitual offender petition with the proper documentation; c) he was not provided with a hearing on the State's habitual offender petition; d) charges to which he had pleaded *nolo contendere* were improperly used to support the State's habitual offender petition; e) a prior conviction was erroneously characterized as first degree, rather than second degree, robbery; f) a prior conviction was more than 10 years old; and g) the Superior Court incorrectly assumed that the minimum mandatory sentence for first degree burglary was 25 years.

(4) Under Delaware law, a sentence is illegal if the sentence exceeds the statutorily-authorized limits, violates double jeopardy, is ambiguous or internally contradictory, omits a term required to be imposed

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<sup>1</sup> Del. Code Ann. tit. 11, §4214(a).

<sup>2</sup> *Winn v. State*, Del. Supr., No. 22, 2007, Ridgely, J. (Jan. 28, 2008).

by statute, is uncertain as to the substance of the sentence, or is a sentence that was not authorized by the judgment of conviction.<sup>3</sup>

(5) There is no merit to any of Winn's claims. First, Winn was properly tried and sentenced on the charges of Burglary in the First Degree and Assault in the Third Degree. This Court previously ruled in Winn's direct appeal that there was sufficient evidence presented at trial to support his conviction of first degree burglary.<sup>4</sup> Moreover, all the elements of third degree assault, the charge of which Winn was convicted, are included within second degree assault, the charge on which Winn was originally indicted.<sup>5</sup>

(6) Winn's next five claims, all of which relate to the basis for his habitual offender status, are also without merit for the following reasons. The State filed its habitual offender petition on November 9, 2006. Although the documentation regarding Winn's conviction of escape after conviction was not attached to the petition, it was provided to Winn in December 2006. At sentencing, Winn, whose request to proceed *pro se* had been granted in the interim, made no objection to the documentation provided by the State. In addition, contrary to Winn's argument, there is no prohibition against the State supporting a habitual offender petition with

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<sup>3</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

<sup>4</sup> *Id.*

<sup>5</sup> Del. Code Ann. tit. 11, §§611 and 612.

convictions obtained through pleas of *nolo contendere*, convictions that are more than 10 years old, or convictions of second degree burglary.<sup>6</sup> Moreover, in the absence of a showing of prejudice, a separate hearing on a defendant's habitual offender status is not required.<sup>7</sup>

(7) Finally, there is no merit to Winn's last claim that he was prejudiced by the Superior Court's erroneous assumption that the minimum mandatory sentence for first degree burglary was 25 years. Even assuming that the Superior Court made such an erroneous assumption, there was no prejudice to Winn, since the Superior Court had discretion to sentence Winn from 15 years to life in prison as a habitual offender.<sup>8</sup> Winn's sentence on his first degree burglary conviction was, therefore, within the statutory limit and, therefore, not illegal.

(8) In the absence of any evidence that Winn's sentence is illegal under Rule 35(a) or that the Superior Court erred or abused its discretion, the Superior Court's judgment must be affirmed.

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<sup>6</sup> Del. Code Ann. tit. 11, §4214(a).

<sup>7</sup> *Smith v. State*, Del. Supr., No. 462, 1999, Walsh, J. (May 2, 2000) (citing *Bailey v. State*, 450 A.2d 400, 404 (Del. 1982)).

<sup>8</sup> Del. Code Ann. tit. 11, §4214(a).

NOW, THEREFORE, IT IS ORDERED that the judgment of the  
Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice